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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-393

JERRY D. BRANTLEY, ET AL,
Petitioners,

versus

UNION BANK & TRUST COMPANY, ET AL,
Respondents.

GRANT BAKER, CLINTON GRADY,
ESSIE LEE FELTON, ET AL,
Petitioners,

versus

R. FRANK KEEBLE, INDIVIDUALLY,
AND TOWN FINANCE CORPORATION,
Respondents.

BRIEF OF RESPONDENT TOWN FINANCE CORPORATION IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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TOWN FINANCE CORPORATION

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TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

QUESTIONS PRESENTED

(1) Whether the maker of a security agreement obligation, in default on the payments, may, after the release of the security and the return of the property to the creditor, and the execution of a written release, maintain an action for damages on a claim that repossession under the Uniform Commercial Code was involved, and that such taking was state action.

The petition for certiorari against TOWN FINANCE CORPORATION (pp. 4, 5, 6) omits alleging the important fact that the maker of the security instrument released his interest in the vehicle, and voluntarily surrendered possession to the agent of TOWN FINANCE CORPORATION.

Part V of the Complaint (pp. 40(a) to 45(a)) alleges a repossession by TOWN FINANCE CORPORATION, pursuant to Title 7-A Section 9-503, Code of Alabama. This defendant's answer affirmatively alleged, in accordance with Rule 7(c), F.R.C.P., the execution and delivery of a release by plaintiff CLINTON GRADY to TOWN FINANCE CORPORATION, and alleges that CLINTON GRADY, the owner of such vehicle, voluntarily and of his own free will, because of his inability to repay the loan he had procured, surrendered possession of such vehicle to TOWN FINANCE CORPORATION and executed a written release for such vehicle, a copy of which is attached as "Exhibit A" - Appendix.

Respondent, therefore, contends that the question said to be presented by the petition is, in fact, unsupported by the record in the case.

Respondent alleges that even if the property had been taken in the manner alleged, under the provisions of the Uniform Commercial Code, mere private repossession does not constitute state action, and is authorized by both *Fuentes v. Shevin*, 407 U.S. 67 (1972) (page 1993, Note 12) and *Mitchell v. W. T. Grant and Co.*, 94 S.Ct. 1895 (1974).

The District Court had no jurisdiction in the first place in Baker's case, under Section 1983, because of the lack of requisite state action.

U.S. v. Price, 86 S.Ct. 1152 on p. 1166, 383 U.S. 787 (1966);
U.S. v. Classic, 61 S.Ct. 1031, 313 U.S. 299 (1941);
Screws v. U.S., 65 S.Ct. 1031, 325 U.S. 91 (1945).

CONCLUSION

We respectfully submit that no legal reason exists for the grant of a writ of certiorari, and that the application should be denied.

Respectfully submitted,

FRANK M. GLEASON

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three copies of the foregoing Brief of Respondent were on the ____ day of November, 1974, mailed to:

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FRANK M. GLEASON

APPENDIX

Defendant, TOWN FINANCE CORPORATION, * * * "denies the allegations contained in sub-paragraph (a) of Paragraph V which alleges that "Plaintiffs went to West Point, Georgia to borrow money from defendant Town Finance Corporation in order to purchase one 1970 Chevelle automobile, Serial Number 136370A172157" (the only plaintiff applying for such loan being CLINTON GRADY), so much of the allegations appearing in sub-paragraph (d) of Paragraph V of the complaint as allege "However at the instruction of defendant Town Finance Corporation she signed as 'Essie Lee Grady' ", the last sentence of sub-paragraph (e) of Paragraph V, the second sentence of sub-paragraph (k) of Paragraph V, the allegations contained in sub-paragraph (m) of Paragraph V of the complaint which allege that JONES came to the residence of the plaintiff and "took possession and repossessed" said automobile (the facts being that on the evening of February 20th, plaintiff CLINTON GRADY accompanied JONES to the residence of GRANT BAKER, who then turned possession of the Chevelle automobile over to CLINTON GRADY, and GRADY then drove the automobile away from the BAKER house to a community called Society Hill, where GRADY voluntarily released such automobile to JONES and executed his written release to such vehicle), sub-paragraph (n) of Paragraph V, sub-paragraph (o) of Paragraph V, sub-paragraph (p) of Paragraph V."

COPY OF RELEASE

2/17/73

I agree to release one 1970 Chevrolet Serial # 136370A172157 to Town Finance Corporation.

/s/ CLINTON GRADY